

## **EXHIBIT D**

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE SUSAN ILLSTON, JUDGE

IN RE: TFT-LCD (FLAT-PANEL) )  
ANTITRUST LITIGATION. ) NO. C 07-MDL-1827 SI

San Francisco, California  
Thursday  
August 29, 2013  
8:43 a.m.

Individual Cases:  
CASE NO. 10-CV-4572  
CASE NO. 12-CV-4114

TRANSCRIPT OF PROCEEDINGS

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(Appearances continued, next page)

1 The evidence all holds together. It's unrebutted.  
2 Everyone at Toshiba U.S., Japan, the folks at Dell, the folks  
3 at other companies everyone acknowledges what was going on  
4 here.

5 Slide 96. It's in that context that Mr. Amano talked  
6 about, creating this kind of channel. He wanted to develop a  
7 network that he could verify prices. And, as I'll get to in a  
8 minute, that bears a lot of similarity to what the folks at  
9 Best Buy did.

10 Slide 97.

11 Testimony by Mr. Collins and Mr. Amano to the effect of  
12 what I was saying before. You want to find out what the  
13 competitor is charging so you can undercut it and win the  
14 business. Mr. Collins talked about that. Mr. Amano talked  
15 about that.

16 And there are some examples. Slide 98. The -- here we  
17 can see a situation where Sharp's price was learned. And  
18 Toshiba went to the bottom of the range. Bottom of the range.  
19 After learning that Sharp was negotiating with Dell in that  
20 range, TMD decided to offer 285 for September/October  
21 proactively. So this is a pro-competitive use of competitor  
22 information.

23 So let's turn from there to the Best Buy module and --  
24 Slide 100.

25 Now, here again I want to try to show that the evidence

1 indicates that Best Buy engaged in the same type of behavior  
2 and intelligence gathering that the Toshiba did.

3 Remember this code of ethics. I questioned Miss Fritz  
4 about it. Best Buy's own code of ethics has a section that  
5 acknowledges competitive intelligence gathering is necessary  
6 to compete effectively.

7 And you may remember the testimony from Miss Fritz, and  
8 also from Mr. Britton: Best Buy engaged dozens and dozens of  
9 employees in this effort. The most -- you know, an incredibly  
10 elaborate effort to gather competitor information.

11 Now, Slide 101. There's Mr. Britton whose video played  
12 here. Acknowledging that as of August 1999, there were 172  
13 marketing coordinators making visits to competitor's stores to  
14 collect information at Best Buy.

15 Slide 102. Here I'd like to draw a comparison. So we've  
16 got Mr. Britton from Best Buy testifying, as we covered in  
17 previous documents, maintaining a network or contacts at  
18 competitors is generally acceptable practice in competitive  
19 intelligence.

20 This is a Best Buy witness acknowledging our defense in  
21 this case. This is one of the scores and scores of Best Buy  
22 employees committed to competitive intelligence, and he's  
23 explaining that within Best Buy, they develop a network and  
24 contacts at competitors in order to compete better.

25 It's very similar to what Mr. Amano testified in the

1 bottom part here.

2 And the competitor intelligence network, you had in mind  
3 was to have American-based employees of Toshiba gathering as  
4 much competitor information as you could get. True?

5 That is correct.

6 That was a question Mr. Silberfeld asked Mr. Amano.

7 The next slide, 103, we've shown you in opening, we showed  
8 you through Miss Fritz' testimony, we showed you through  
9 Mr. Britton's testimony. A variety of documents from within  
10 Best Buy that show Best Buy having competitor contacts in a  
11 variety of contexts.

12 This is one Mr. Britton was just testifying about, where  
13 one of the Best Buy operatives was having contact with my good  
14 friend, who's an operations manager at a Circuit City.

15 Okay. My good friend. That sounds a lot like the e-mail  
16 that Mr. Silberfeld was condemning Toshiba for in his closing  
17 about Mr. Chiba and Mr. Amano having friends or acquaintances  
18 at other companies like Sharp.

19 And here the Best Buy operative is talking about pricing  
20 with the Circuit City counterpart.

21 Slide 104. Best Buy had a policy by which they had to  
22 match -- they undertook to match a competitor's price and --  
23 in order sometimes to verify the price of the competitor, they  
24 would call up and have a direct communication to verify what  
25 the price was.

1 That's equivalent to our Dell master purchase agreement  
2 and our other arrangements with customers where our price is  
3 based on the competitor's price and therefore sometimes  
4 there's verification communications.

5 Slide 105, 106, are -- to the same extent, these are more  
6 Best Buy documents that we've shown to you and are in evidence  
7 that show that the competitive field operatives at Best Buy  
8 are gathering up information from competitors and -- including  
9 through direct communications with those competitors.

10 Slide 107, to the same extent. Pinging their contacts.  
11 They have whole units pinging contacts to verify information  
12 about Circuit City.

13 Slide 108. Remember, I questioned Miss Fritz extendedly  
14 about their Black Friday competitive intelligence. You'll  
15 recall that Miss Fritz testified Black Friday is the biggest  
16 shopping day of the year. They had everything they could to  
17 gather up information about what competitors were doing. They  
18 knew months ahead of time what sales promotions Wal-Mart was  
19 going to do on Black Friday. They even knew the sales  
20 projections of Wal-Mart for Black Friday.

21 Again, I'm not condemning that. That can be good  
22 business. But Best Buy does it, why can't Toshiba do it?

23 Slide 109. You may remember this document which I showed  
24 Miss Fritz. Asia Newsflash. This is the operatives in Asia  
25 for Best Buy who are reporting back to all of the senior

1 executives in the company about competitive intelligence that  
2 they gathered in Asia. You can also see that document  
3 contains that scary sounding legend about: If you're not an  
4 authorized recipient, you ought to destroy the document.

5 Slide 110. This is another internal Best Buy document  
6 that's -- the status is listed as Top Secret, For Authorized  
7 Personnel Only, No Distribution. Sometimes business people,  
8 especially those in competitive intelligence, might take  
9 themselves a little too seriously on the spy side and think  
10 that they're dealing with state secrets or something. And  
11 that's reflected in Toshiba.

12 No question about it. You've seen that there's a formal  
13 policy in Toshiba that one of the appropriate legends for  
14 sensitive information is "destroy after reading". Especially  
15 maybe with something while it's in translation, that sounds  
16 unusually stark and overdone, but we see the same type of  
17 thing done in Best Buy documents.

18 **THE COURT:** You're just about out of time.

19 **MR. CURRAN:** Am I?

20 **THE COURT:** Just about.

21 **MR. CURRAN:** I'm sorry.

22 I would like to quickly jump then to Mr. Silberfeld's  
23 slides.

24 Can we show Slide 22 from Mr. Silberfeld's slides, please?

25 Mr. Silberfeld walked you through a number of documents